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Programme budget for the biennium 2014-2015**Administration of justice at the United Nations****Administrative and budgetary aspects of the financing
of the United Nations peacekeeping operations****Administration of justice at the United Nations and
activities of the Office of the Ombudsman and
Mediation Services****Report of the Advisory Committee on Administrative and
Budgetary Questions****I. Introduction**

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on the administration of justice at the United Nations (A/70/187) and the activities of the Office of the United Nations Ombudsman and Mediation Services (A/70/151). The Advisory Committee also had before it the report of the Internal Justice Council on the administration of justice at the United Nations (A/70/188). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 7 October 2015.

2. The reports of the Secretary-General are submitted pursuant to General Assembly resolution 69/203, in which the Assembly requested that the Secretary-General report on several issues relating to the administration of justice at its seventieth session. The report on the administration of justice at the United Nations provides statistics on the functioning of the system of administration of justice for 2014, as well as responses to the Assembly's requests in resolution 69/203. The report on the activities of the Office of the United Nations Ombudsman and Mediation Services provides information on the activities of the Office for 2014.

3. The present report contains the Advisory Committee's observations and comments on the Secretary-General's reports. In section II, the Committee provides

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its recommendations on the administration of justice and on the Secretary-General's responses to the requests of the General Assembly in resolution 69/203. Section III contains the Committee's recommendations on the Office of the United Nations Ombudsman and Mediation Services.

4. On the basis of its review of the Secretary-General's reports on the administration of justice in recent years, the Advisory Committee considers that it would be useful to include a glossary of legal terminology in future reports to enhance the understanding of the readership.

II. Administration of justice at the United Nations

Overall observations

5. In paragraphs 6 to 15 of his report, the Secretary-General makes overall observations. In particular, he observes a discernible link between decisions that have had an impact on large numbers of staff members and an increase in cases received in the formal system of internal justice. This link was also identified in the previous report of the Secretary-General (A/69/227).

6. In 2014, such decisions included: a rostering exercise for field service staff that resulted in more than 600 requests for management evaluations and one application to the United Nations Dispute Tribunal; a decision not to grant permanent appointments to staff members of the International Tribunal for the Former Yugoslavia, resulting in some 260 requests for management evaluations; and the holding of a periodic salary survey, which triggered a temporary remuneration freeze for some staff, resulting in more than 100 applications to the Dispute Tribunal (see A/70/187, paras. 7 and 20).

7. The Secretary-General considers that, apart from the above-mentioned decisions and the related increase in cases, the number of cases received in the formal system each year has in fact stabilized (see A/70/187, para. 10).

8. The Advisory Committee recalls that since the system came into operation in 2009, the number of new cases received across the different parts of the formal system of administration of justice had increased generally each year until 2012, when a decrease in new cases received by the Management Evaluation Unit and the Dispute Tribunal was recorded (see A/68/530, para. 4). In 2013, there was an increase in new requests or cases in all parts of the formal system except the United Nations Appeals Tribunal and the Office of Staff Legal Assistance, followed by an overall increase across the different parts of the system in 2014. **The Advisory Committee notes that these statistics demonstrate a continuing fluctuation in the number of cases received by different parts of the formal system from year to year. In the view of the Committee, therefore, it is premature to draw conclusions about what constitutes a normal level of recourse to the formal system and whether or not the caseload of the system has stabilized. The Committee trusts that the Secretary-General will continue to collect data on the formal system, including information on the decisions resulting in a large number of instances of formal recourse, and to provide a disaggregated analysis of the data in future reports.**

9. The report of the Secretary-General also indicates that in 2014: (a) the majority of cases received were related to benefits and entitlements, appointment-

related matters and separation from service; and (b) a slight majority of staff members filing cases with the Dispute Tribunal and the Appeals Tribunal were self-represented.

10. The Secretary-General highlights in his report the significant number of cases resolved informally during the reporting period. More than 200 cases pending in the formal system were resolved without the need for a final adjudication on the merits. As at 30 April 2015, some 75 per cent of management evaluation requests received in 2014 had not been pursued beyond the management evaluation stage (see A/70/187, paras. 13-15). **The Advisory Committee commends efforts to resolve cases prior to litigation, including through enhanced cooperation between the formal and informal parts of the justice system, and encourages further efforts in that regard.**

A. Review of the formal system of justice

Management Evaluation Unit

11. The report states that in 2014, the Management Evaluation Unit received 1,541 requests for management evaluation (compared with 933 in 2013), of which 1,402 were closed by the end of the year. Of these, 417 were upheld decisions of the Organization, 84 were reversed decisions, 89 were moot requests, 5 were formally settled requests, 768 were non-receivable requests, 31 were withdrawn requests and 8 were misrouted requests (see A/70/187, table 1).

12. The report also indicates that 125 requests were resolved through efforts by the Unit itself or by the decision maker(s) themselves or with the involvement of the Office of Staff Legal Assistance or the Office of the United Nations Ombudsman and Mediation Services. Three resolutions included the payment of compensation, for a total of \$29,173. In addition, compensation paid in 2014 related to six staff members who had filed requests in 2013 and two staff members who had filed requests in 2012 (see A/70/187, para. 25 and annex VI).

United Nations Dispute Tribunal

13. The report indicates that the United Nations Dispute Tribunal had 226 pending cases as at 1 January 2014 and received 411 new cases in 2014 (compared with 289 in 2013). The Tribunal disposed of 320 cases, and, as at 31 December 2014, 317 cases were pending. The Tribunal rendered 148 judgements, issued 827 orders and held 258 court sessions (see A/70/187, para. 33 and tables 3 and 5). Regarding the outcomes of cases, the report indicates that 81 applications were withdrawn, 22 were closed by inter-registry transfer, 4 were closed for want of prosecution and 2 were for revision, interpretation or execution. The Tribunal rendered 97 judgements in favour of the respondent and 57 judgements decided, in part or in full, in favour of the applicant (see A/70/187, figure IV).

14. The Advisory Committee notes that in 2014, the number of judgements and orders issued and court sessions held in the Dispute Tribunal in Geneva was considerably lower than those in New York and Nairobi, with 67 cases disposed of in Geneva, compared with 128 in Nairobi and 125 in New York, during the same period (see A/70/187, tables 4 and 6). Upon enquiry, the Committee was informed that this had been due to the absence of one full-time judge in Geneva for most of

the year following the resignation of one judge at the end of March 2014. The Committee notes the significant impact of the absence of a full-time judge on the Dispute Tribunal in Geneva, which had only one full-time judge throughout the year and, for a period of three months, one half-time judge.

15. In that connection, in his report the Secretary-General proposes the extension of the three ad litem judge positions and their supporting staff for one year, from 1 January to 31 December 2016, in order to keep abreast of the caseload and reduce the time taken for the disposition of cases (see A/70/187, paras. 46-49). **The Advisory Committee has no objections to the proposed extension of the three ad litem judges of the Dispute Tribunal and the supporting staff complement.**

United Nations Appeals Tribunal

16. The report indicates that the United Nations Appeals Tribunal had 110 cases pending from 2013 and received 137 new cases in 2014 (compared with 125 in 2013). The Tribunal disposed of 146 cases, leaving 101 cases pending as at 31 December 2014. The Appeals Tribunal rendered 100 judgements, issued 42 orders and held one oral hearing in 2014. Sixty-five per cent of the appeals and applications were filed by staff members, and 35 per cent were filed on behalf of the Secretary-General. Of the 86 appeals related to Dispute Tribunal judgements, 40 were filed by staff members and 46 were filed on behalf of the Secretary-General. Of the 40 appeals filed by staff members, 30 (75 per cent) were rejected, 8 (20 per cent) were granted in full or in part and 2 (5 per cent) were closed or withdrawn. Of the 46 appeals filed on behalf of the Secretary-General, 13 (28 per cent) were rejected and 33 (72 per cent) were granted in full or in part (see A/70/187, para. 63).

17. The report indicates that the number of interlocutory motions filed before the Appeals Tribunal rose from 39 in 2013 to 84 in 2014, reflecting an increase of 115 per cent. The Secretary-General states that such motions require early attention, including between sessions, in order to provide the parties with timely judicial direction and avoid delay (see A/70/187, table 8 and para. 72).

Monetary compensation

18. Annex VI to the report provides information on the monetary compensation awarded by the two Tribunals in 2014 or paid in 2014 in respect of earlier judgements. It shows that the Dispute Tribunal awarded such compensation in 79 cases in 2014, including 20 related to the Department of Field Support. In 27 of the 79 cases, the Appeals Tribunal vacated or decreased the compensation awarded by the Dispute Tribunal (see A/70/187, para. 67). Upon enquiry, the Advisory Committee was informed that out of the 20 cases related to the Department of Field Support resulting in monetary compensation, 9 were linked to mission downsizing (most of which related to the United Nations Mission in the Sudan and the United Nations Mission in Liberia). The Committee was also informed that in order to avoid similar disputes in the future, a policy on downsizing was being developed under the leadership of the Office of Human Resources Management. **The Advisory Committee notes the information provided on the compensation awarded by the Tribunals and welcomes the development of a policy on mission downsizing as a result of the lessons learned from the emerging jurisprudence.**

Office of Staff Legal Assistance

19. The report states that the Office of Staff Legal Assistance received 1,180 new cases in 2014, compared with 765 in 2013. The relatively high number of cases in 2014 was due to a number of "class appeals".¹ The Office closed or resolved 1,171 cases, including cases from previous years. As at 31 December 2014, 222 cases were pending (see A/70/187, para. 78 and table 10). Upon enquiry, the Advisory Committee was informed that the Office's largest client groups were composed of staff members at peacekeeping missions (417 clients), staff at Headquarters (194 clients) and staff located in "other" locations, comprising mostly offices away from Headquarters and the funds and programmes (496 clients).

20. The report refers to General Assembly resolution 68/254, in which the Assembly decided to implement, on an experimental basis from 1 January 2014 to 31 December 2015, a voluntary payroll deduction in order to supplement the funding of the Office of Staff Legal Assistance. Subsequently, in resolution 69/203, the Assembly requested the Secretary-General to continue to collect data relating to financial contributions made by staff to the Office and to report on the implementation of incentives for staff not to opt out of the voluntary supplemental funding mechanism (see A/70/187, paras. 124-130). The related observations and recommendations on the voluntary supplemental funding mechanism are set out in paragraphs 24 to 27 below.

B. Responses to the requests by the General Assembly in its resolution 69/203

21. In resolution 69/203, the General Assembly made a number of requests to the Secretary-General for information and proposals for consideration at its seventieth session, and in paragraph 50 thereof requested the Secretary-General to report on the implementation of the resolution at that session. Details relating to the responses to those requests are contained in paragraphs 113 to 152 of the Secretary-General's report. The responses include information on the five issues discussed in paragraphs 22 to 31 below.

1. Revised proposal for conducting an interim independent assessment of the system of administration of justice

22. In paragraph 11 of its resolution 68/254, the General Assembly requested the Secretary-General to submit to the Assembly for consideration at its sixty-ninth session a revised proposal for conducting an interim independent assessment of the system of administration of justice, to be carried out in a cost-efficient manner by independent experts, including experts familiar with internal labour dispute mechanisms. The purpose of the assessment is to examine the system of administration of justice in all its aspects, with particular attention accorded to the formal system and its relationship with the informal system, including an analysis of whether the aims and objectives of the system set out in General Assembly resolution 61/261 are being achieved in an efficient and cost-effective manner.

¹ Situations in which large groups of staff from the same United Nations entity facing the same issues approached the Office for assistance, but each case was counted as a single case.

23. Pursuant to the direction and guidance of the General Assembly set out in resolution 69/203, the Secretary-General appointed a panel of independent experts to conduct such an assessment. Upon enquiry, the Advisory Committee was informed that the panel, composed of five experts, had met in May 2015 and would remain operational for a period of six months until the end of October 2015.² The panel is supported by a secretary at the P-5 level and an administrative assistant. In accordance with paragraph 13 of resolution 69/203, the Secretary-General will transmit the recommendations of the panel, together with its final report and his comments, for consideration by the Assembly at the main part of its seventy-first session. **The Advisory Committee welcomes the establishment of the panel and reiterates its view that an interim independent assessment of the system of administration of justice is desirable at this juncture to evaluate the functioning of the system to date and to ensure that it is meeting its objectives as a mechanism to effectively resolve labour disputes within the Organization (see A/68/530, paras. 18-20, and A/69/519, paras. 22-25). The Committee looks forward to the recommendations of the independent panel, together with the report of the Secretary-General and his comments. The Committee trusts that the recommendations and the related comments will be comprehensive and cover all major aspects of the justice system.**

2. Voluntary supplemental funding mechanism for the Office of Staff Legal Assistance

24. As discussed above, the General Assembly approved the creation of a voluntary staff-funded mechanism to supplement the funding of the Office of Staff Legal Assistance (see resolution 68/254, para. 33, and resolution 69/203, para. 33).

25. In that regard, in annex III to his report the Secretary-General provides information on the monthly opt-out rates for the main United Nations entities and the voluntary contributions by staff members under the mechanism from 1 April 2014 through 30 June 2015. The data show that the opt-out rates, while relatively stable during the 18-month period, varied greatly from one United Nations entity to the other. Upon enquiry, the Advisory Committee was provided with detailed statistics for the month of June 2015. They show that the opt-out rate was relatively low among international staff at field missions (31.05 per cent) and at the Office of the United Nations High Commissioner for Refugees (UNHCR) (37.47 per cent), while the rates were significantly higher at the United Nations Children's Fund (87 per cent), the United Nations Office at Vienna (78.42 per cent) and the Economic Commission for Latin America and the Caribbean (77.58 per cent).

26. Across all entities, contributions collected from staff under the mechanism total approximately \$60,000 per month. Those contributions allowed for the temporary recruitment of two P-4 Legal Officers (one in New York and one in Nairobi) and three Legal Assistants, located in Addis Ababa, Beirut and Nairobi, for the balance of the experimental period. Upon enquiry, the Advisory Committee was informed that the Legal Officers had assumed duties in February 2015, the Legal Assistant in Nairobi in June 2015 and the Legal Assistant in Beirut in August 2015. The Legal Assistant position in Addis Ababa had been advertised twice owing to a lack of successful applicants, and the job opening had since been closed. The report

² One panel member, who resigned on 5 August 2015 and subsequently passed away, was not replaced.

indicates that the staff contributions were not yet sufficient to allow for the addition of one Legal Assistant in Geneva.

27. The Secretary-General considers that it is critical that the Office of Staff Legal Assistance retain the additional Professional and General Service staff funded through the mechanism in order to properly handle the Office's caseload, and therefore requests that the experimental period established by the General Assembly for the purpose of providing for additional resources for the Office be extended for one year, from 1 January to 31 December 2016 (see A/70/187, para. 128). **The Advisory Committee recalls that this application of the mechanism was specifically limited to funding additional resources for the Office of Staff Legal Assistance. The Committee notes that the mechanism achieved enough to recruit a sufficient number of staff, despite significant opt-out rates in some entities and geographic regions. Therefore, the Committee does not object to the extension for one year, from 1 January to 31 December 2016, of the experimental period established by the General Assembly for the purpose of providing additional resources for the Office, pending the completion of the independent interim assessment and the consideration of any recommendations relating to the functioning and funding of the Office.**

3. Incentives for staff not to opt out of the supplemental funding mechanism

28. In paragraph 32 of resolution 69/203, the General Assembly requested the Secretary-General to report on the implementation of incentives for staff not to opt out of the voluntary supplemental funding mechanism and to report thereon in his next report. In that regard, the report lists various measures taken to persuade staff members not to opt out of the mechanism, including the following: (a) articles have been posted to the United Nations intranet to explain the mechanism and its benefits for staff; (b) the Chef de Cabinet has issued a memorandum to all heads of departments, offices and regional commissions to encourage contributions under the mechanism and support for the outreach efforts of the Office of Staff Legal Assistance; and (c) entities and duty stations with high opt-out rates have been prioritized in terms of outreach activities (see A/70/187, para. 130).

29. **The Advisory Committee acknowledges the efforts made thus far to persuade staff members not to opt out of the voluntary funding mechanism for the Office of Staff Legal Assistance and encourages the Secretary-General to renew and strengthen those efforts in the coming period, particularly in places where the participation rate is low. The Committee recommends that the General Assembly request the Secretary-General to continue to collect and examine data relating to staff contributions.**

4. Privileges and immunities of the judges

30. In paragraph 43 of resolution 69/203, the General Assembly requested the Secretary-General to review the issue of harmonization of the privileges and immunities of the judges and to submit a proposal in his next report. The Secretary-General's proposal, which is set out in annex IV to his report, includes amendments to the statutes of the Tribunals and has been submitted to the Assembly for its approval. Upon enquiry, the Advisory Committee was informed that the recommendation set out in paragraph 4 of annex IV to the report was that the Appeals Tribunal judges should benefit from the same privileges and immunities as

those enjoyed by the judges of the Dispute Tribunal, including the exemption of United Nations salary or emolument from taxation imposed by any national authority. According to the information provided to the Committee, the proposal would have no resource implications for the Organization.

5. Mechanism for addressing complaints against judges

31. In paragraph 46 of resolution 69/203, the General Assembly requested the Secretary-General to submit to it a refined proposal with regard to the scope of application and the title of the mechanism for addressing complaints under the authorized code of conduct applicable to judges of the Dispute Tribunal and the Appeals Tribunal. The proposal is set out in annex V to the report and has been submitted to the Assembly for its approval.

III. Activities of the Office of the United Nations Ombudsman and Mediation Services

32. The report states that the Office of the United Nations Ombudsman and Mediation Services opened 2,236 cases in 2014, representing a 7 per cent increase in caseload compared with 2013. Of those 2,236 new cases, 1,671 originated in the Secretariat, 431 in the funds and programmes and 134 in UNHCR. Cases originating at field missions³ represented 40 per cent of the total caseload of the Office and 51 per cent of the cases originating in the Secretariat (see A/70/151, figure II, para. 18 and figure VI).

33. In terms of the types of cases received in 2014, the main issues were "job and career", "evaluative relationships" (the relationship between a supervisor and a supervisee) and "compensation and benefits", accounting for 30 per cent, 23 per cent and 13 per cent of those cases, respectively (see A/70/151, paras. 15 and 16). The report also highlights systemic issues, including abusive behaviour and incivility in the workplace, the continuing imperative to strengthen investigations and the issues faced by staff serving in dangerous places (see A/70/151, paras. 59-86).

34. The report indicates that the utilization rate was 4 per cent in the Secretariat in 2014, reflecting an increase compared with the previous year, when the utilization rate was approximately 3 per cent.⁴ The rate was highest among staff at the D-1 level and above, at 9 per cent, and lowest among staff in the General Service category, at 2 per cent. The overall rate was 3.4 per cent for men and 5.2 per cent for women (see A/70/151, para. 19).

35. With regard to the distribution of cases by occupational group, the report shows that international professionals, who brought 46 per cent of the total number of cases, continue to be the most frequent users of the Ombudsman and mediation services, followed by General Service staff (17 per cent), national staff (15 per cent), Field Service staff (9 per cent), staff at the D-1 level and above (4 per cent), former staff (4 per cent), United Nations Volunteers (3 per cent) and others (2 per cent).

³ Field missions comprise the peacekeeping missions and special political missions of the Secretariat.

⁴ The utilization rate is defined as the relationship between the overall number of staff and the number of cases received.

36. The General Assembly, in resolution 69/203, requested information on the number and nature of cases brought by non-staff personnel. During the reporting period, 145 cases involved non-staff personnel, reflecting an increase of 20 per cent compared with the previous year. Of those 145 cases, 57 per cent came from individual contractors and consultants and 43 per cent from other categories of non-staff personnel. The main issues of concern relate to "compensation and benefits" (35 per cent) and "job and career" (22 per cent).

37. The report also indicates that the Mediation Service opened 64 cases in 2014 (compared with 73 cases in 2013). Fifty-seven cases emanated from the Secretariat and seven from the funds and programmes and UNHCR. Of the 64 cases received in 2014, 46 had been completed as at 15 July 2015; of these, 33 had resulted in settlements and 13 had not (see A/70/151, paras. 22 and 23).

38. Regarding the contribution of the Office of the United Nations Ombudsman and Mediation Services to the progressive development and revision of human resources policies and practices, the Advisory Committee was informed upon enquiry that the Office of the Ombudsman had regular meetings with the Office of Human Resources Management and the Department of Field Support, including on the implementation of the staff mobility framework. Specifically, the Office of the Ombudsman provided input on dealing with performance management in relation to the lessons-learned guides developed by the Management Evaluation Unit of the Department of Management and participated in discussions relating to the enterprise risk management exercise in the Secretariat (see also A/70/151, paras. 50-58). **The Advisory Committee supports the continued involvement of the Office of the United Nations Ombudsman and Mediation Services in the progressive development of human resources policies and practices.**

39. In paragraph 20 of resolution 69/203, the General Assembly regretted that the Secretary-General had not fulfilled the request to ensure that the revised terms of reference and guidelines for the Office of the United Nations Ombudsman and Mediation Services were promulgated, and reiterated its request to the Secretary-General to do so by the end of December 2014 at the latest. The Advisory Committee notes that the Secretary-General's report contains no information in that regard. Upon enquiry, the Committee was informed that extensive consultations had taken place within and among the Secretariat, the participating funds and programmes and UNHCR on the terms of reference for the Office and that the Executive Office of the Secretary-General had sent a draft of the terms of reference to the funds and programmes and UNHCR, where it was under active consideration. It is anticipated that the terms of reference will be promulgated in the form of a Secretary-General's bulletin in early 2016. **The Advisory Committee notes with regret that the Secretary-General has not yet complied with the request of the General Assembly to finalize the terms of reference for the Office of the United Nations Ombudsman and Mediation Services, and expects that the ongoing consultations will be concluded expeditiously and the related Secretary-General's bulletin promulgated in early 2016, but not later than the end of February 2016.**

IV. Conclusion

40. The actions to be taken by the General Assembly are indicated in paragraph 156 (a) to (d) of the Secretary-General's report on administration of justice at the United Nations (A/70/187). The Advisory Committee notes that in some cases, the actions requested of the Assembly include approval, while in others the Assembly is requested to take note of and approve the relevant provisions. **In the case of paragraph 156 (b) (viii) and (c), the Advisory Committee is of the view that these are matters for the General Assembly to determine.**